

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 09-0602

JOSEPH T. BERLIN and MARTHA M. BERLIN,

Plaintiffs and Appellees,

v.

MAGNOLIA ENTERPRISES, LLC., COLBERT P.
HOWELL, BARBARA J. HOWELL, NORTHWEST
ACCEPTANCE CORP., BARBARA JEAN HOWELL
as TRUSTEE of the REVOCABLE INTERVIVOS
VIRGINIA-BELL NEILSON TRUST, and DENNIS
DeVAR NEILSON,Defendants and Appellants.

FILED

JAN 26 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O R D E R

On January 6, 2010, this Court entered an Order staying foreclosure proceedings on a sheriff's sale which was scheduled for the same day. We entered this Order on the basis of Appellants' Joint Motion for Emergency Stay of Execution of Foreclosure and Sale, which was filed via facsimile on January 6, 2010.

Appellees' Motion to Set Aside Order and Appellees' Response in Opposition to Joint Motion for Emergency Stay of Execution of Foreclosure Sale was filed January 7, 2010. Appellees point out that by the time our Order staying foreclosure proceedings and sheriff's sale reached the Appellees and the Sheriff, the property had already been sold. Appellees argue, correctly, that once the property was sold, our Order granting a stay became moot, as the matter at issue had ceased to exist and no longer presented an actual controversy—that is, that this Court could no longer grant effective relief. *Grabow v. Mont. High School Assn.*, 2000 MT 159, ¶ 14, 300 Mont. 227, 3 P.3d 650. Appellees also point out that Appellants failed to post a court-ordered supersedeas bond in the amount of \$100,000, and that Appellees had not been given sufficient opportunity to respond to Appellants' motion pursuant to M. R. App. P. 22.

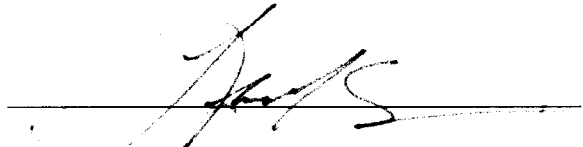
Additionally before this Court is Appellants' Joint Response to Appellees Motion to Set Aside Order and Appellees Response in Opposition to Joint Motion for Emergency Stay of Execution of Foreclosure and Sale. In this response Appellants argue that the stay order is not moot because the purchaser at a mortgage foreclosure is not entitled to possession of the land as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for the execution debtor and the debtor's family. Section 71-1-229, MCA. Appellants also cite *North Dakota v. Fredericks*, 940 F.2d 333, 334, (8th Cir. 1991), in default of any Montana decision on point. Reciting various misunderstandings, Appellants state that they are diligently seeking a supercedeas bond. Finally, they contend that Appellees incorrectly interpret M. R. App. P. 22, because Appellants sought a stay from this Court before the District Court had ruled on their motion for stay in that court.

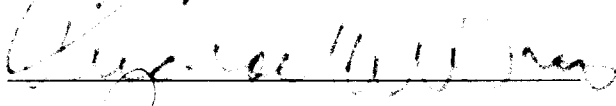
Having the benefit of the Appellees' motion and the Appellants' response, we conclude that this matter should be remanded to the District Court for entry of findings of fact, conclusions of law, and an order in accordance with M. R. App. P.22(1). For one thing, there appears to be confusion in the procedural facts—specifically when Appellants applied for their stay in the District Court that court's ruling, and when they applied for their stay in this Court. Moreover, it is not clear whether the real property at issue is personally occupied by the debtor as the debtors' family home, vis-à-vis the property being used as commercial property. Furthermore, the matter of the supercedeas bond and any misunderstandings related to that needs to be sorted out by the District Court. Finally, it is clear that the provisions of M. R. App. P 22 were not complied with. The reason why this Court adopted the procedures set forth in this Rule was to avoid the sorts of procedural and factual confusion apparent here. Therefore,

IT IS ORDERED that this cause is remanded to the District Court for such further proceedings as that court deems appropriate and consistent with this Order, and for entry of findings of fact, conclusions of law and an order within 20 days of the date of this Order. Pending entry of the findings, conclusions and order by the District Court, this Court's January 6, 2010 order shall remain in force and effect.

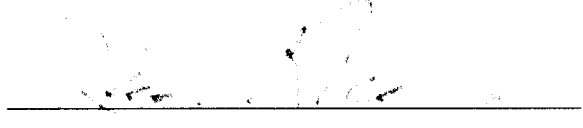
IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Order to counsel of record by e-mail, followed by regular mail.

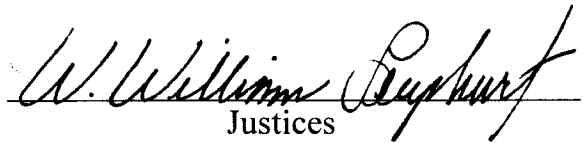
Dated this 26th day of January, 2010.





Patricia Potter





Justices